



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 22-00274
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

01/27/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the security concerns regarding his untimely filing of Federal and state income tax returns for four consecutive years, and the development of significant Federal and state delinquent taxes, which are not fully resolved. Eligibility for access to classified information is denied.

Statement of the Case

On March 22, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

Applicant provided an undated response to the SOR, and he requested a hearing before a Defense Office of Hearings and Appeal (DOHA) judge. On September 15, 2022, the case was assigned to me. On November 9, 2022, DOHA issued a notice of hearing, setting the hearing for November 29, 2022. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered three Government Exhibits (GE 1-3) and Applicant did not offer any documents. I admitted into evidence all proffered exhibits. I held the record open until December 20, 2022, in the event either party wanted to submit additional documentation. DOHA received the hearing transcript (Tr.) on December 6, 2022. On December 20, 2022, Applicant submitted 12 documents, which I labeled as Applicant Exhibits (AE) A through L and admitted without objection. The record closed on December 21, 2022.

Findings of Fact

Applicant is 52 years old. He earned an associate's degree in 2007. He has been married since 1996. He has two children with his current wife, and they also adopted his niece and nephew. He has four children before he became married in 1996. His youngest daughter and nephew still reside in the home. Since 2007, he has been employed as an electronic mechanic with a DOD contractor. This is his first application for a DOD security clearance. (Tr. 17-21; GE 1)

The SOR alleges financial considerations security concerns in that Applicant did not timely file Federal and state income tax returns for tax years 2017, 2018, 2019, and 2020, and he owes delinquent Federal and state taxes. Since his Answer was unclear, Applicant clarified at the hearing that he had admitted all of the SOR allegations under Guideline F. (SOR ¶¶ 1.a-1.d.) (Tr. 9-10)

(SOR ¶¶ 1.a and 1.c.) Applicant failed to timely file, as required, his Federal and state income tax returns for 2017, 2018, 2019, and 2020. Applicant and his wife used a certified public accountant (CPA), a friend of his wife's, to prepare and file their income tax returns. In 2018, Applicant discovered that the CPA had not filed their 2017 tax returns. He spoke with his wife about the problem, and thought it was being handled. He then later found out that the CPA had not filed their 2018 tax returns either. The CPA had been diagnosed with cancer. They requested that the CPA return their tax paperwork, so they could have these tax returns filed by another tax preparer. By the time Applicant submitted his security clearance application (SCA) in March 2021, he admitted that he was aware they were seriously behind on filing their Federal and state income tax returns for tax years 2017-2019, and that they had also accumulated delinquent Federal and state tax debt. (Tr. 22-24)

After the submission of his March 2021 SCA, Applicant and his wife came up with a plan to resolve their tax issues. His spouse tried two different tax companies, but the companies were unable to provide assistance. When Applicant responded to the Government interrogatories in November 2021, his IRS tax transcripts dated September 2021 showed that they had not filed a Federal tax return for tax years 2017, 2019 and 2020. His Federal tax transcript showed that their 2018 tax return was filed in May 2021. (Tr. 25-32; GE 2)

Applicant provided Federal tax transcripts dated December 19, 2022, post-hearing. These documents showed that his 2017 Federal tax return was filed on September 26, 2022, and his 2019 Federal tax return was filed on March 7, 2022. His 2020 Federal and state tax returns were submitted (Federal tax transcript unavailable)

which reflected they were “signed by Applicant and his wife” on December 12, 2021. His 2021 Federal and state tax returns were “signed on October 10, 2022.” He stated the 2021 tax returns were timely filed, which would be correct assuming his tax preparer filed for an extension. The 2017, 2018, and 2019 state tax returns submitted with his interrogatory were all undated. (AE B, AE C, AE G, AE H, AE I, AE J; Tr. 32-33)

Applicant stated the problems associated with the untimely filing of their state and Federal tax returns were due to circumstances outside of their control. Their CPA was diagnosed with cancer and they had difficulty trying to retrieve their tax papers from her. At his hearing, he repeated his statement made in response to DOHA interrogatories that his wife also attempted to hire two tax service companies to correct their tax issues, but they were unable to provide assistance. In 2020, his wife’s identity was stolen, and the filing of her 2020 tax return involved a complicated process. Applicant provided email communication from their hired tax preparer, who notified his spouse in February 2022, that the Internal Revenue Service (IRS) had rejected the electronic filing of her 2020 tax return since it had been previously filed (due to identity theft.) The tax preparer informed her that he would have to file a paper tax return for 2020, and that it could cause some delays. (AE A, AE E; Tr. 31-33)

(SOR ¶1.b) Applicant is indebted to the Federal Government in the approximate amount of \$15,406, for tax years 2017, 2018, 2019, and 2020. Applicant did not provide any documentation about the current balance of his delinquent Federal tax debt, whether he had arranged a payment plan, or made any tax payments to the IRS. A review of his Federal tax transcripts, and his signed tax return for tax year 2020, showed the outstanding delinquent taxes, as follows:

Tax Year 2017 - Transcript	Owes - \$27,296
Tax Year 2018 - Transcript	Owes - \$15,406
Tax Year 2019 - Transcript	Owes - \$5,378
Tax Year 2020 – sign retrn	Owes - \$1,815

The total amount Applicant owes the Federal Government for delinquent taxes for tax years 2017-2020 is approximately \$49,896. (GE 2; AE B, AE C, AE G)

(SOR ¶1.d) Applicant is indebted to his state of residence in the approximate amount of \$8,965 for tax years 2017, 2018, 2019, and 2020. He disclosed in his November 2021 interrogatory that he had arranged a payment plan with the state tax department, and he was making monthly payments of \$240. He submitted documentation dated December 2022 from the state department of revenue that showed he had made 12 payments of \$240 and the current balance of his outstanding state tax was \$12,530. It is unclear if this amount was for a specific tax year, or whether it was a combined total of all of his delinquent state taxes. His signed 2020 state tax return showed \$2,586 was owed to the state, and the 2021 state tax return showed \$1,842 was owed to the state. (GE 2; AE H, AE J, AE K; Tr. 34-35)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant did not timely file his Federal and state income tax returns for 2017, 2018, 2019, and 2020. His delinquent Federal income taxes for tax years 2017 through 2020 total approximately \$50,000, and his outstanding taxes owed to the state are approximately \$13,000. These debts have been delinquent for several years, and they remain delinquent. AG ¶¶ 19(a), 19(c), and 19(f) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The DOHA Appeal Board has commented that an Applicant's failure to file income tax returns (or, as alleged here, to address resulting tax debt):

. . . suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

Applicant bears the burdens of production and persuasion in mitigation. His failure to timely file his Federal and state income tax returns persisted for four consecutive years. After his discovery in 2018 that their 2017 tax returns had not been filed due to the CPA's illness, he should have taken immediate steps to remedy the situation. Instead, three more years followed with his Federal and state tax returns not being filed on time. It appears that only after he applied for a DOD security clearance that he finally decided to take action to resolve his tax issues.

Applicant's excuse that his wife's identity was stolen and caused them to file their 2020 Federal income tax return late is not supported by evidence in the record. The email communication dated February 2022, from their tax preparer stated that he (tax preparer) had just been notified by the IRS that the electronic filing of Applicant's wife's 2020 tax return was rejected due to a 2020 tax return already filed under her social security number. At this point in time, Applicant and his wife were unaware of the fraud, but it is clear from this communication that their 2020 income tax return had been filed late nonetheless. In fact, the identity theft had nothing to do with the untimely filing of their 2020 Federal tax return.

To Applicant's credit, he established a payment plan with the state tax department, and has made 12 payments to reduce his delinquent state tax debt. The problem, however, is that his state tax debt has continued to increase, not decrease, since the SOR was issued. The amount originally alleged in the SOR was \$8,965, and it has now grown to approximately \$12,530. It is important to note that his Federal tax debt, originally alleged in the SOR as \$15,406, is now approximately \$50,000. Applicant did not provide any evidence that he has arranged a payment plan, or that he has made any payments

on this significant Federal tax debt. These tax delinquencies have persisted for several years and are still unresolved.

Applicant did not demonstrate that his tax delinquencies arose from conditions beyond his control and that he acted responsibly under the circumstances to resolve these issues. There is no evidence of any debt-resolution efforts with the Federal government, and despite making 12 payments towards his delinquent state tax debt, the balance of this debt has continued to grow. None of the financial considerations mitigation conditions apply. Applicant did not mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's untimely filing of his Federal and state income taxes continued for four consecutive years. As such, he developed significant outstanding tax debt to both the state and Federal government. He has made payments towards his state tax debt, but despite these payments, his state tax debt has continued to increase over time. He has not provided sufficient documentation that he is arranging a payment plan, or made any payments to the Federal government for approximately \$50,000 of delinquent tax debt beyond filing his tax returns and having some funds withheld from his salary. Given his burden to demonstrate reliability, trustworthiness, and good judgment, I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.-1.d.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge